SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. [redacted] 77

CHARLES S. LOBINGIER,

Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS AND ARGUMENT IN SUPPORT THEREOF.

CHARLES S. LOBINGIER,
Pro se.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 973

CHARLES S. LOBINGIER,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI.

Statement.

Petitioner prays for a writ of *certiorari* to review the judgment of the United States Court of Claims, sustaining the demurrer to, and dismissing, his petition below,[1] whose averments are admitted by the demurrer,[2] and which constitutes petitioner's statement of facts here.

The question presented is

> Must a government official or employe, who has been allowed two years for the *transportation* of his household goods, wait until the end of that period

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[1] See Record, pp. 1-5.

[2] "• • • every uncontradicted allegation of fact by the unsuccessful party must be taken as true". Postal etc. Co. v. Newport, 247 U. S. 464, 474. "• • • and in determining their legal effect • • • we are at as full liberty to consider them as was the state supreme court". *Truax* v. *Corrigan*, 257 U. S. 312.

for reimbursement of "expenses * * * for the packing, crating and drayage", which the act of October 10, 1940 requires to "*be allowed and paid WHEN specifically authorized or approved by the head of the department or establishment concerned*"?

Reasons for Granting the Writ and Specifications of Error.

1. The case involves the interpretation of this recent Act of 1940 which affects the interests of thousands of government workers and was never before judicially construed.

2. The decision below was rendered by a divided Court, only two others of the five judges concurring with the author thereof, and petitioner submits that the minority opinion is much the sounder, juster and more logical.

3. The majority opinion wholly ignores the history of federal legislation on the subject, the conditions under which the present statute was enacted, the change of language therein, and especially the clause prescribing the time for reimbursement.

4. Said opinion cities not a single authority, but leans heavily on the comptroller general's action, assuming for him powers which he does not possess, but disregarding his one decision (5 C. G. 229) in point here, and thereby creating a conflict.

5. Said opinion errs in substituting speculation for proof and relying upon assumptions and conjectures which have no support in the record.

6. Said opinion errs in relying (pp. 7, 8) upon the titles of the Act in question and of the executive order accompanying it, and fails to decide expressly the one question before the lower court, viz. the sufficiency of plaintiff's petition.

Argument.

1. (*Supporting specifications 1-3 p. 1 supra.*)

Let us notice first, statutes preceding the Act of 1940 and their application by the Comptroller.

The act of May 27, 1908 (35 Stats. 392) provided for "freight, transportation and travelling expenses" for the "public health and marine-hospital service"; but a surgeon's claim of reimbursement "for boxing for shipment a piano, trunk and sundries" was rejected (15 Comp. Treas. Dec. 731). Under the act of March 4, 1911 (36 Stats. 1265) providing for "transportation", a weather bureau employe was refused reimbursement for expenses of uncrating furniture following a change of station (27 Comp. Treas. Dec. 261). Under the act of Feb. 17, 1922 (42 Stats. 366, 386) providing "for the *transportation* of household goods *incident to change of headquarters*", reimbursement of expenses for drayage, unpacking and uncrating was denied (2 C. G. 598). The act of Jan. 25, 1929 (45 Stats. 1119) provided for "transportation and subsistence" of Bureau of Foreign and Domestic Commerce employees "when travelling" etc. Reimbursement for storage was refused as "not incidental". (9 C. G. 517). The act of April 27, 1938 (52 Stats. 274) provided for "transportation . . . of families and effects of officers and employees of" the same bureau. A Trade Commissioner, transferred to a new post, was denied reimbursement for shipment of household goods because "*by reason of delay*" it was not "necessary, incident to, or by reason of, *such transfer*," (18 C. G. 408, italics supplied). It will thus be seen that the Comptroller has construed these older statutes almost uniformly against the official, as *not* making "packing, crating and drayage", "incidental to transportation" and *excluded* them. Now that the statute expressly does *include* them, he holds that they *are* "incidental to transportation"

and refuses reimbursement until the latter takes place—a complete *volte face.*

Such was the situation which faced the President in 1940 when, as the Court will judicially notice (*Clark* v. *U. S.* 99 U. S. 493, 495), World War II, then raging for over 13 months, rendered it probable that our country would soon be involved. With means of information not available to the public, he foresaw the necessity of unprecedented shifts of our government personnel from the capital and sought to make the process as painless as possible. To correct uncertainties and ambiguities in the older acts and to eliminate the hair splitting and cheese paring construction thereof, shown above, the act of Oct. 10, 1940 was enacted requiring

> "That expenses which now or hereafter may be authorized by law to be paid from Government funds for the *packing, crating, drayage* and *transportation* of household goods and personal effects of civilian officers and employees of any of the executive departments or establishments of the United States when transferred from one official station to another for permanent duty, *shall hereafter be allowed and paid, when specifically authorized or approved by the head of the department or establishment concerned* (italics supplied).

Here, it will be seen, the Comptroller General's denials of reimbursement for "packing, crating and drayage" are overruled by Congress and each of those items is provided for separately, distinctively and independently from transportation and with equal prominence. The statute might have read "transportation *including* packing, crating and drayage" (or "incidental" thereto); but it does not. Is it not clear that these changes reveal the legislative intent to set aside the Comptroller General's narrow rulings and establish a more liberal policy toward the "decen-

tralized'' personnel? The Petition (4) alleges, and the demurrer admits, that this act of 1940 was ''to protect the government personnel from the loss and hardship as a result thereof'', and as this Court said in *A. Bryant Co.* vs. *Steam Fitting Co.*, 235 U. S. 327, 339 ''. . . the act . . . is highly remedial and its provisions must be adapted to fulfill its whole purpose''. Even if its meaning were doubtful it should be so construed ''as to effect the general purpose of Congress'' (*P. R. Co.* v. *Mor*, 253 U. S. 345, 348 & Cit.). Those purposes are further manifested in Ex. Order 9122 which, as supplemented by petition's Ex. 3, give plaintiff until March 16, 1944 to avail himself of the privilege of transportation—the ''packing, crating and drayage'' having been completed and paid for by the shipper. But if the parties for whose benefit this act was designed must wait two years for reimbursement, the privilege of transportation imposes a burden which, it is inconsistent with the President's attitude to assume, was intended. Yet, ignoring this elementary doctrine, which was pressed upon the lower court in plaintiff's brief, the majority opinion adopts (p. 9) the narrowest possible construction of the statute, denying ''separate reimbursement for the separate items mentioned'' therein. The reason alleged for such denial is that ''separate reimbursement . . . would create such confusion and possible waste'', etc. (Cf. p. 8); but here the opinion speculates and ignores the petition which alleges (5) that plaintiff, with his agency's approval, ''employed the . . . company whose bid was the lowest for packing, crating and drayage'' of the items in question. Surely that suffices at least to raise a presumption against waste. And here the minority opinion (p. 11) is unanswerable in showing that plaintiff is entitled in any case to recover for the items claimed, ''provided their cost does not exceed'' that of transportation to ''Philadelphia by the most eco-

nomical means", plus the preparatory expenses. But if economy is the chief object, why transport at all? Is it economy for the government to force the official or employe to ship his goods to Philadelphia in order to obtain reimbursement for necessary "packing, crating and drayage"? Would it not be the gainer by reimbursing him for the expense actually incurred, without compelling the much greater expense of transportation? The minority opinion is again unanswerable in saying (p. 10) "I cannot ascribe to Congress an intention to make transportation a prerequisite to reimbursement for expenses incurred, however foolish such transportation would have been."

And would there not be less "confusion and possible waste" from the course followed by plaintiff than by the "partial shipment" plan[3] expressly authorized by the April 28, 1942, Supplement to the Regulations? And since there may be "instalment shipments", why not instalment reimbursements? Surely one is just as consistent with the language of the act and the executive orders as the other. Finally, if there can be no "separate reimbursement for separate items", why does Ex. Ord. 8588 (15) require that "the total charge for the services shall be itemized so as to show the charge for each service"?

Unfortunately, the majority opinion (p. 6) quotes the statute down to the clause italicized above (p. 4) and stops there in the midst of the sentence. Yet that clause is the crucial one of the entire statute and it is not only omitted there but is not even mentioned elsewhere in the opinion. Petitioner submits that such omission vitiates the entire decision; for without that clause the statute cannot be understood nor interpreted for this case. That clause pre-

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[3] "The Government will undertake to transfer the household goods of employees who desire to make a partial shipment from Washington and within 6 months thereafter, to ship the remainder to the new location."

scribes expressly "*when* (the) expenses . . . shall be allowed and paid". It is "*when* they are specifically authorized or approved by the head of the establishment". The demurrer admits plaintiff's transfer "for permanent duty", pursuant to said act and to the above mentioned order" (of "the head of the . . . establishment"), payment of $127.50 for "packing, crating and drayage" and the specific approval of said head in Ex. 3 attached to the Petition. Petitioner submits that said order relates back to, and confirms, "the approval of the chief of said Commission's Budget and Accounting Section", whose action must in any event be presumed regular and in accordance with the Chairman's instructions, (*Quinlan* v. *Green County*, 205 U. S. 410, 422; *Consol. Ed. Co.* v. *N. L. R. B.*, 305 U. S. 197, 226 (1936)) and that the latest date to which reimbursement could legally be deferred would be Sept. 9, 1942, when the Commission's Chairman approved the expense and extended the time for transportation. Petitioner's rights must be determined as of that date. The majority opinion makes no point, however, as to the *date* of approval; its position is that no reimbursement for any step might be made until all four steps have been taken. Not only is this inconsistent with the crucial clause italicized above, but the majority opinion expressly contradicts it by asserting (p. 9) "the absence of statutory language clearly so stating" (i. e. "the right to separate reimbursement)." What language could be clearer than that requiring reimbursement "when specifically authorized" etc.? How could the majority opinion have ignored this direction and sought support for its position in such phrases as "incident to transportation" (p. 7) etc., "in connection with transportation" (p. 9), which are not in the present statute nor in any previous one, but originated with the Comptroller General?

2. *(Supporting specification 4, supra p. 1).* The opinion recites (p. 9) that "the Public Buildings Administration and the Comptroller General . . . encountered the statute before we did" and accepts their conclusions as "not unreasonable". Of course in this class of cases the administrative officers always "encounter the statute before" the Court of Claims does; but are their conclusions any weightier on that account? If so the claimant in such a case will always be at a disadvantage and one is tempted to ask, Why was the Court of Claims established? In this case at least the "encounter" yielded nothing; but the question here is not the "reasonableness" of their conclusions but the sufficiency of the petition. And heretofore the lower court has not been so ready to accept such "conclusions".[4] Indeed that court seems to have found it necessary to reverse the Comptroller General oftener than to sustain him. Congress overruled him in the very statute here involved and the President recently reversed him on a question of wages.

But if the majority desired to follow the Comptroller General because he "encountered the statute before we did", why did it not go back to the first and only previous decision (5 C G 229) where this precise question was determined and which the minority opinion (p. 12) well says "should be the guide for the decision in this case". There an officer was transferred from Norfolk to Washington, where, previously, he had stored his household goods. Reimbursement was allowed for drayage to his new residence tho "transportation had not occurred" nor was the drayage "incidental to transportation"—a sound and common sense ruling. But had the Comptroller General applied the same

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[4] See e. g. *Thomas* v. *U. S.*, 87 Ct. Cls. 573 (1938) ("patently erroneous"); *Schmoll* v. *U. S.*, 91 ib. 1 (1940); *Regnier* v. *U. S.*, 92 ib. 437 (1941); *H. W. Sweig Co.* v. *U. S.*, ib. 472 (1941).

line of reasoning as in his decision here, he would have told the officer: "You must send your goods back to Norfolk, have them unpacked and uncrated, then repacked and recrated and transported at government expense before I can allow anything for drayage." The conflict thus created "is a sufficient ground for the writ."[5]

The majority opinion quotes (p. 7) what it states are the reports of Congressional Committees on the act while pending and claims that it was "the result (*sic*) of a recommendation of the Comptroller General". The passage quoted merely says that "the Comptroller General recommends that legislation be enacted" etc.; but contemporaneous history, of which the Court will take judicial notice (*Clark* v. *U. S. supra* p. 4) indicates more strongly that the initiative came from the President. For *the Comptroller General appears wholly oblivious of the difference in phrascology between the acts above mentioned and that of Oct. 10, 1940.* Nowhere in his decision does he recognize any change of policy as reflected in the new act. When he refers to it, he treats it just like the old ones. Yet if it had been drafted in his office, or under his direction, he would surely have observed the obvious difference. Of course, he "recommended" legislation if the President sponsored it; but that is quite different from initiating it. And if the Comptroller General did "recommend" it, his action must have been merely perfunctory for he nowhere seems to sense its real significance. Again *the regulations (Ex. Order 8588) for carrying into effect the act of 1940 were drafted in advance of the latter's passage.* This appears from the "effective date" of the order (Sec. 17) which was the date of the act's passage, viz. Oct. 10, 1940. The order must have been all ready for the Presidential signature as soon as enactment was announced. Not only

[5] See Robertson, Jurisdiction of the Supreme Court, Sec. 333.

so, but Ex. Order 9122, further easing the burdens and hardships of "decentralization", was issued only four weeks later and but one year and one month before Pearl Harbor.

The majority opinion (p. 8) misconstrues Ex. Order 8588 (5) providing for "shipment * * * by the most economical means" etc. and holds in effect that it authorizes the Comptroller General to dispense with drayage and crating at his option. But if he may do that with these items he may do it with packing. Would any sane person trust such fragile goods as glassware, chinaware and other crockery, mirrors, book cases with glass doors, pianos and other musical instruments, sewing machines, radios, books, frail chairs and tables, to the tender mercies of a motor van driver for a haul of 135 miles over a road none too smooth, dumping them in without even packing them? As regards the claim (opinion p. 8) that "It would not be possible to ascertain whether, and how much, crating and drayage were compatible with 'the most economical means of transportation' ", it should suffice to point out that petitioner's goods had been packed and hence "ready for shipment to the new station" ever since March 16, 1942 so that it has been perfectly feasible for the Comptroller General "to determine the most economical means" of shipment. That was known to the Public Buildings Administration as soon as plaintiff's bill was presented in March, 1942.

All three of these items are statutory rights which cannot be taken away by an executive order. Nor does Ex. Ord. 8588 (5) purport to do so. "Shipment" is merely a synonym for "transportation", which, by the 1940 statute, is distinguished and segregated from "packing, crating and drayage", *preparatory* to transportation. "Means of Shipment" (i. e. medium of transportation) refers to the type of carrier; it has nothing to do with the three preparatory steps except that their "*cost*" may be con-

sidered in choosing between motor van, rail or water. Yet the opinion assumes (p. 9) that some "administrative officers" may dispense with at least two of these prescribed, preparatory steps. This contradicts the statute which *requires* reimbursement for all items "*when* specifically authorized", etc. It might as well be claimed that they could dispense with transportation. "Where a statute creates a new right * * * and provides a specific remedy * * * such provisions are exclusive." *Barnett* v. *Bank*, 98 U. S. 555.

3. (*Supporting Specification 5, supra p. 1.*) Beside accepting the Comptroller General's "conclusions" the majority opinion does little more than speculate (pp. 8, 9) on what "is likely", or "possible", or what "the transportation could probably be". Especially unwarranted are the assumptions (p. 8) that the goods "could be shipped more economically by being placed directly into a moving van from the employe's home" and that there was "a door-to-door van from Washington to Philadelphia". There was in fact no such van. That which the government provided started from the Commission's building at 20th & Pa. and was a non-stop carrier, unless, by *special concession*, additional goods were loaded at a place along the direct route to Philadelphia. The petition below (5) alleges that plaintiff left his goods at such a place (920 E. St., N. W.—the Transfer Company's plant) whose location the Court may judicially notice,[6] "preparatory to the transportation thereof to Philadelphia", and hence ready for "the common carrier", as provided in Ex. Ord. 8588 (4).

But even had there been "a door to door van from Washington to Philadelphia" on Mch. 16, 1942, petitioner was not required to avail himself thereof. He had two years then to move his goods and, as the minority opinion points

[6] "Judicial notice is taken of streets * * * location, general direction" etc. 23 Corpus Juris, p. 87, sec. 1875.

out, (p. 11) plaintiff was not restricted to government transportation at all but was authorized to use "other means".

Similar is the assumption (maj. op. p. 9) that "it is entirely possible that some of the expenses already incurred (for crating and drayage) may not be reimbursable at all". It has just been shown that the drayage was to the common carrier, pursuant to Ex. Ord. 8588. For crating, the Transfer Company made no extra charge; the china and glassware were packed in barrels called "crates" but all were billed as "packing".

4. *(Supporting Specification 6, supra p. 1.)* That the title of the 1940 act uses only the word "transportation" means nothing when the body of the act provides for much more; nor need "the title to an act of Congress, be looked to in ascertaining the intent" (59 Corpus Juris 1008, sec. 599); for ". . . *we have only to look to the body of the act to ascertain its intention*" (Italics supplied; *Hough* v. *Porter,* 51 Oregon 318). As the minority opinion (p. 11) well points out, the sole question submitted to the Court was whether plaintiff's petition states a cause of action. There is no express finding that it does not; and its insufficiency is not shown by indulging in the speculation just reviewed. But the majority opinion barely notices the petition and certainly fails to point out wherein it is deficient. The government, after carefully conferring with other agencies, accepted the recitals therein as correct and since there is no real dispute about the facts, petitioner prays that the judgment of the lower court be reversed with instructions to enter one for petitioner for the full amount claimed together with interest and costs.

Respectfully submitted,

CHARLES S. LOBINGIER,
Pro se.

(1918)

(27)

No. 77

In the Supreme Court of the United States

OCTOBER TERM, 1944

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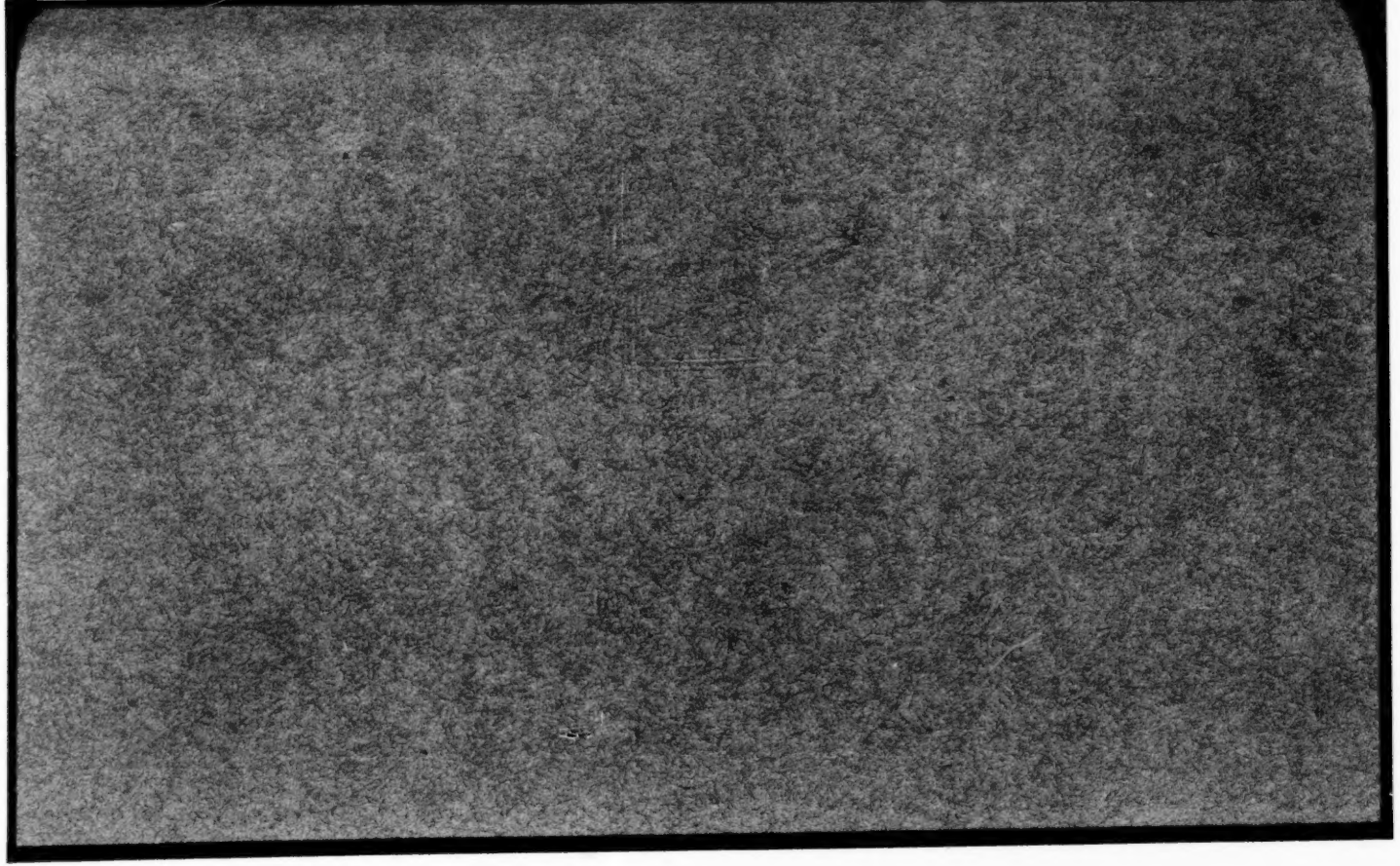
ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION



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OPINION BELOW

The opinion of the Court of Claims (R. 5–12) is reported in 100 C. Cls. 448.

JURISDICTION

The judgment of the Court of Claims was entered on December 6, 1943 (R. 12). Petitioner's motion for a new trial was overruled on February 7, 1944 (R. 12). The petition for a writ of certiorari was filed on May 6, 1944. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 12, 1939, 28 U. S. C. 288 (b).

QUESTION PRESENTED

Whether under the Act of October 10, 1940, and regulations issued thereunder, a federal employee whose official station is transferred from Washington, D. C., to Philadelphia, Pa., is entitled to reimbursement for the expenses of packing, crating, and drayage of his household goods and personal effects to a place of storage in Washington, D. C., before such goods and effects are transported to the new official station.

STATUTE AND REGULATIONS INVOLVED

The statute and regulations involved are set forth in the Appendix, pp. 12–21, *infra*.

STATEMENT

The facts as alleged in the petition in the Court of Claims (R. 1–3), and as admitted by the demurrer of the United States (R. 5), are as follows:

Petitioner, an officer of the Securities and Exchange Commission, was officially stationed at the main office of the Commission in Washington, D. C., until March 1942, when that office was transferred to Philadelphia, Pa., in the process of partially decentralizing the Federal Government. On March 5, 1942, petitioner was directed by the Commission to proceed from his official station in Washington to Philadelphia, on or about March 16, 1942, to be permanently stationed there. The

Act of October 10, 1940 (see Appendix, pp. 12–13, *infra*) provides that:

> expenses which now or hereafter may be authorized by law to be paid from Government funds for the packing, crating, drayage, and transportation of household goods and personal effects of civilian officers and employees of any of the executive departments or establishments of the United States when transferred from one official station to another for permanent duty shall hereafter be allowed and paid, when specifically authorized or approved by the head of the department or establishment concerned, under such rules and regulations as may be prescribed by the President * * *.

With the approval of the Chief of the Commission's Budget and Accounting Section, petitioner employed the Merchants' Transfer and Storage Company, whose bid of $127.50 was the lowest, to pack, crate, and dray his household goods and personal effects to the company's storage house in Washington, D. C., preparatory to their transportation to Philadelphia after petitioner should secure a suitable apartment there. On September 9, 1942, in accordance with Section 12 of Executive Order No. 8588, as amended by Executive Order No. 9122 (see Appendix, pp. 19–20, *infra*), he secured from the Chairman of the Commission an extension to March 16, 1944, for the transportation of his household goods and

personal effects to Philadelphia.[1] He tried to find an apartment in Philadelphia within his means, to house his goods and effects, but was unable to do so and did not transport his goods and effects to Philadelphia.[2] Shortly after reaching Philadelphia, petitioner presented the storage company's bill for $127.50 to the Public Buildings Administration of the Federal Works Agency.[3] The Federal Works Agency refused payment but

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[1] The regulations prescribed by the President under authority of the Act of October 10, 1940, required shipments to begin within six months of the effective date of transfer but permitted extensions of time by the head of the department or agency for not more than two years from the date of transfer (Section 12 of Executive Order No. 8588, effective October 10, 1940, amended by Executive Order No. 9122 of April 6, 1942; Appendix, pp. 19–20, *infra*).

[2] It does not appear, and petitioner has declined to inform us, whether he had shipped his goods and effects to Philadelphia before March 16, 1944, the last day on which he could so transport them at Government expense, or indeed whether he has shipped them at all. See note 1, *supra*.

[3] The Public Buildings Administration conducted the decentralization and transfer program by virtue of authority contained in certain letters of the President to the Secretary of the Treasury, allocating funds for the transfer of household goods and personal effects of transferred employees, "as provided by the Act of October 10, 1940, and regulations promulgated thereunder." Letters of Allocation to Secretary of Treasury, No. 42–48, December 23, 1941; No. 42–69, February 6, 1942; and No. 42/3–8, April 18, 1942; see 22 Comp. Gen. 478, 481. These funds were derived from the Independent Offices Appropriation Act of 1942 (Act of April 5, 1941, c. 40, 55 Stat. 92, 94) and the Third Supplemental National Defense Appropriation Act of 1942 (Act of December 17, 1941, c. 591, 55 Stat. 810, 818), establishing an Emergency Fund to be expended under direction of the President.

referred the matter to the Comptroller General of the United States. The latter sustained the refusal, ruling that an employee is not entitled to reimbursement for packing, crating, and drayage expenses incurred as a result of a decentralization order if the goods are never actually transported to the new official station, nor prior to such transportation (22 Comp. Gen. 478, November 17, 1942). Meanwhile, in order to prevent his goods and effects from being sold by the storage company to meet the unpaid charges, petitioner paid the bill of $127.50, and on February 19, 1943, instituted suit for that amount in the Court of Claims. The United States demurred to the petition (R. 5). The Court of Claims sustained the demurrer and dismissed the petition (R. 12).

ARGUMENT

The Court of Claims properly held that the Act of October 10, 1940, does not entitle petitioner to reimbursement for the expense of packing, crating, or drayage of his household goods and personal effects before they are actually transported to the new official station (R. 5–9).

1. The Act and its legislative history plainly disclose that it was designed to reimburse employees for the *transportation* of their household goods and personal effects to the new official station, and that the other items of expense were to be allowable only as costs incidental to such trans-

portation. This appears from the title of the Act ("To provide for uniformity of allowances for the *transportation* of household goods," etc.) and from its last proviso ("nothing herein shall affect the allowance and payment of expenses for, *or incident to,* the transportation of effects of officers and employees of the Foreign Service"). See Appendix, p. 12, *infra.*

Both the Senate and House Reports on the bill (S. Rep. 1591, p. 1; H. Rep. 1947, p. 1) set forth the recommendation of the Comptroller General "that legislation be enacted to establish uniformity of allowances for the *transportation* of household goods and personal effects of civilian officers and employees when transferred from one official station to another for permanent duty."[4] The regulations promulgated by the President less than a month after adoption of the Act (Executive Order No. 8588, issued November 7, 1940) are identified as "Regulations Governing the Payment of Expenses of *Transportation* of Household Goods and Personal Effects" of federal employees, and the reference in those regulations to expenses of packing, crating, and drayage suggests that they will

[4] Nothing in these reports or any other record of the course of the bill through Congress intimates that the Act was intended to "set aside the Comptroller General's narrow rulings and establish a more liberal policy," as the petition for certiorari suggests (pp. 3–4).

be allowed only as incidental to actual transfer.[5] There is nothing in the Act or its background to indicate, and petitioner does not contend, that Congress intended to reimburse transferred employees for the expenses of storing furniture which may never be moved to the new official location; and the expenses which petitioner seeks to recover here are related to such storage, rather than to transportation.

It is significant that of almost 17,000 employees transferred in the process of decentralization, petitioner is the only one who has made a claim for expenses of packing, crating or drayage prior to actual transportation.[6] His claim was denied by the Public Buildings Administration and by the Comptroller General. 22 Comp. Gen. 478. This construction of the Act by those entrusted with its administration, including the official (the Comptroller General) at whose suggestion the statute was enacted (see p. 6, *supra*), cannot be

[5] "Sec. 3. *Allowances for Packing, Crating, Unpacking, and Uncrating.*—The actual costs of packing, crating, unpacking, and uncrating shall be allowed: * * *"

"Sec. 4. *Allowances for Drayage.*—The actual costs of drayage to and from the common carrier shall be allowed: * * *"

"Sec. 15. *Preparation of Vouchers.* * * * b. *Itemization of Charges:* Where services rendered cover, *in addition to transportation*, such other services as packing, crating, drayage, unpacking, and uncrating, the total charge for the services shall be itemized * * *." [Italics supplied.] See Appendix, pp. 15, 20, *infra*.

[6] Source: Mr. Walter A. Clark. See note 9, p. 10, *infra*.

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ignored as guides to the meaning of the Act. *Adams* v. *United States*, 319 U. S. 312, 314–15; *United States* v. *American Trucking Associations*, 310 U. S. 534, 549; *Hassett* v. *Welch*, 303 U. S. 303, 310.

The construction urged by petitioner—reimbursement of "pre-transportation" expenses when they are incurred, whether or not the goods are actually shipped to the new station—would create "confusion in payment and audit" contrary to the objectives of the Act. (See pp. 9–10, *infra*.) Section 5 of the President's regulations, as amended, requires that the "shipment shall be by the most economical means, taking into consideration the cost of packing, crating, drayage, unpacking, and uncrating," and as the Comptroller General pointed out (22 Comp. Gen. 478, 483), "unless and until the household goods are ready for shipment to the new station there can be no proper comparison of the relative cost of transportation by water, rail, or van to determine the most economical means or whether packing and crating will be necessary in any event."[7] Under the petitioner's interpretation of the Act, an employee could have his furniture crated and drayed at Government expense to a warehouse, even though the most economical means of shipment to the new station would be to place the furniture directly into a moving van, for door to door delivery,

[7] Packing and crating are usually not required when transportation is by motor van. 22 Comp. Gen. 478, 483.

without any crating or drayage. As the court below properly concluded, this would be "nothing but waste" which the statute does not "compel the administrative officers of the Government to reimburse from public funds" (R. 9).

2. Petitioner contends here, as he did below, that, in order to be entitled to reimbursement for the expenses of packing, crating, and draying his goods and effects, he need only secure authorization or approval of such expenses from the head of the establishment in which he is employed. There is nothing in the pleadings or record to indicate that such authorization or approval was had.[8] In any event petitioner's contention was properly rejected by the court below. The provision for approval by the head of the department or establishment is a condition precedent to any right to reimbursement, but is clearly not a grant of power to the head of each department and establishment to decide what expenses of this kind are to be borne by the Government. This appears from the legislative history of the statute,

[8] Contrary to his statement in the petition for certiorari (p. 7), the letter of September 9, 1942, (R. 4–5) from the Chairman of the Commission to the Public Buildings Administration merely approved an extension of time for the shipment of the household goods of petitioner and other employees of the Commission, without mentioning or referring to packing, crating, and drayage expenses. The Chief of the Commission's Budget and Accounting Section is alleged to have approved these expenses, but there is no allegation in the original petition that he had authority to act for the Commission in such cases.

disclosing that the chief objective of the Act was to achieve "reasonable uniformity" in allowances and "to obviate the inequalities and confusion in payment and audit" by substituting a single statute and set of regulations for the various legislative provisions applicable to separate agencies and the widely varying regulations which each agency had adopted thereunder. See S. Rep. 1591 (76th Cong., 3d Sess.), pp. 3–4; H. Rep. 1947 (76th Cong., 3d Sess.), p. 3. For that reason the rule-making power under the statute is expressly vested not in the several department heads but in the President. See Appendix, p. 12, *infra*.

CONCLUSION

The judgment below represents a reasonable construction of the statute involved, and does not foreclose a claim by petitioner for the expenses in question if he actually shipped the goods and effects to Philadelphia within the allotted time. The question presented is one of limited application and does not merit review by this Court.[9] It is respectfully submitted that the

[9] The process of decentralization has been virtually completed. It may be noted that of the almost 500 employees of the Securities and Exchange Commission transferred to Philadelphia, petitioner, so far as we know, is the only one to have made a claim under the 1940 Act based upon the difficulty of finding a suitable habitation there. Source: Mr. Walton C. Clark, Engineer Assistant to Commissioner of Public Buildings (serving as Assistant Manager to the Office of Decentralization Service at the time the decentralization program was carried out), Public Buildings Administration, Federal Works Agency.

petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.

FRANCIS M. SHEA,
Assistant Attorney General.

DAVID L. KREEGER,
Special Assistant to the Attorney General.

JOSEPH B. GOLDMAN,
Attorney.

JUNE 1944.

APPENDIX

I. The Act of October 10, 1940, 54 Stat. 1105, 5 U. S. C. 73c–1, reads as follows:

AN ACT

To provide for uniformity of allowances for the transportation of household goods of civilian officers and employees when transferred from one official station to another for permanent duty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That expenses which now or hereafter may be authorized by law to be paid from Government funds for the packing, crating, drayage, and transportation of household goods and personal effects of civilian officers and employees of any of the executive departments or establishments of the United States when transferred from one official station to another for permanent duty shall hereafter be allowed and paid, when specifically authorized or approved by the head of the department or establishment concerned, under such rules and regulations as may be prescribed by the President, which regulations shall prescribe, among other matters, the maximum weight of the property, not to exceed five thousand pounds gross or the equivalent thereof when transportation charges are based on cubic measurement, which may be packed, crated, hauled, transported, and unpacked at Government expense: *Provided,* That no part

of such expenses shall be paid from Government funds where the transfer is made at the request and primarily for the convenience or benefit of the officer or employee: *Provided further*, That nothing herein shall affect the allowance and payment of expenses for, or incident to, the transportation of effects of officers and employees of the Foreign Service, Department of State, except where the transfer is made at the request and primarily for the convenience or benefit of the officer or employee.

H. Executive Order No. 8588, approved November 7, 1940 (5 F. R. 4448), provides in pertinent part:

> PRESCRIBING REGULATIONS GOVERNING THE PAYMENT OF EXPENSES OF TRANSPORTATION OF HOUSEHOLD GOODS AND PERSONAL EFFECTS OF CERTAIN CIVILIAN OFFICERS AND EMPLOYEES OF THE UNITED STATES
>
> By virtue of and pursuant to the authority vested in me by the act of October 10, 1940, Public No. 839, 76th Congress, entitled "An Act To provide for uniformity of allowances for the transportation of household goods of civilian officers and employees when transferred from one official station to another for permanent duty", I hereby prescribe the following regulations governing the allowance and payment from Government funds of expenses now or hereafter authorized by law for the packing, crating, drayage, transportation, and unpacking of household goods and personal effects of civilian officers and employees of any of the executive departments or establishments of the United States when

transferred from one official station to another for permanent duty:

SECTION 1. When any civilian officer or employee of any of the executive departments or establishments of the United States, hereinafter called employee, is transferred from one official station to another for permanent duty and the payment of expenses of transportation of his household goods and other personal effects is authorized by law, such expenses, when specifically authorized or approved by the head of the department or establishment concerned, shall be allowed and paid in accordance with the provisions of these regulations.

SECTION 2. *Maximum Allowances for Transportation.* (a) *Weight.*—The actual costs of transportation of the household effects and other personal property of the employee, not in excess of 5,000 pounds gross, and of the packing, crates, boxes, lift vans, or other temporary containers required for the shipment, shall be allowed: *Provided,* That employees who have no dependents living with them shall be entitled to the transportation of household effects and other personal property not in excess of 2,500 pounds gross. Gross weight shall include the net weight of the property and the weight of the usual containers of the property, but shall not include the weight of packing, crates, boxes, or lift vans which have no connection with the property except for the purposes of the immediate shipment and which do not constitute a continuing part of the property of the employee.

For the application of the limitations prescribed by this subsection the gross weight of the property shall be computed

as being 80 percent of the combined weight of the property and the packing and crating used for the shipment: *Provided,* That in case of shipments involving transportation by vessel over all or part of the distance the gross weight of the property shall be computed as being 50 percent of the combined weight of the property and the packing, crating, boxing, and lift vans used for the shipment: *And provided further,* That when shipment is by motor freight the gross weight of the property shall be the actual weight of the goods transported. Thus, transportation will be allowed at Government expense for property when packed, crated, boxed, or placed in lift vans for shipment, within the following maximum weights:

	Pounds
Employees having dependents living with them:	
Shipment involving transportation by vessel over all or part of route	10,000
Shipment by rail only	6,250
Shipment by motor freight only	5,000
Employees having no dependents living with them:	
Shipment involving transportation by vessel over all or part of route	5,000
Shipment by rail only	3,125
Shipment by motor freight only	2,500

(b) *Volume.*—Where charges for transportation are computed on a basis of measurement rather than weight, charges will be allowed regardless of weight for not to exceed 29 measurement tons of 40 cubic feet each, inclusive of packing, crating, and lift vans: *Provided,* That employees who have no dependents living with them shall be allowed charges for not to exceed 22 measurement tons.

* * * * *

SECTION 3. *Allowances for Packing, Crating, Unpacking, and Uncrating.*—The actual costs of packing, crating, unpacking,

and uncrating shall be allowed: *Provided,* That no charges shall be allowed for the packing, crating, unpacking, and uncrating of property in excess of the weight or measurement allowable under section 2 of these regulations.

SECTION 4. *Allowances for Drayage.*—The actual costs of drayage to and from the common carrier shall be allowed: *Provided,* That in no case shall costs of drayage be allowed where door-to-door common carrier rates are applicable.

SECTION 5. *Means of Shipment.*—Shipment shall be made by the most economical means, taking into consideration the costs of packing, crating, drayage, unpacking, and uncrating: *Provided,* That, in computing comparative costs, the allowance which may be made for the saving of charges for packing, crating, drayage, unpacking, and uncrating resulting from the use of motor freight shall in no case exceed $2.50 per hundred pounds: *And provided further,* That, when the head of the department or agency determines it to be in the interest of the Government, he may specifically authorize the shipment by express of articles required for immediate use at the new official station (for example, professional books, wearing apparel, bedding, or kitchen utensils, but not furniture or jewelry), which shall in no case exceed a weight of 500 pounds for employees having dependents living with them or 250 pounds for employees having no dependents living with them.

NOTE.—Section 5 was amended by Executive Order No. 9122 of April 6, 1942 (7 F. R. 2665), to read as follows:

"SECTION 5. *Means of Shipment.*—Shipment shall be by the most economical means,

taking into consideration the costs of packing, crating, drayage, unpacking, and uncrating: *Provided, however,* That the employee may have his effects moved by some means other than that determined to be most economical by paying the difference between the lowest available charges and the charges by the preferred means: *And provided further,* That, when the head of the department or agency determines it to be in the interest of the Government, he may specifically authorize the shipment by express of articles required for immediate use at the new official station (such as professional books, wearing apparel, bedding or kitchen utensils, but not furniture or jewelry), which shall in no case exceed a weight of 500 pounds for employees having dependents living with them or 250 pounds for employees having no dependents living with them. In considering comparative transportation costs as required by this section, the lowest available motor van charges may be determined by consulting published tariffs or by securing competitive bids, the use of either method to be construed as being determinative of the lowest available rate for motor transportation."

SECTION 6. *Use of Government Bill of Lading.*—Shipment shall be made on Government bill of lading whenever possible; otherwise reimbursement shall be made to the employee for transportation expenses actually and necessarily incurred within the limitations prescribed by these regulations. If property in excess of the amount allowable under these regulations is shipped on a Government bill of lading with the authorized allowance the employee shall immediately upon completion of the shipment pay to the proper officer of the department or

establishment an amount equal to the charge for the transportation of such excess.

SECTION 7. *Computation of Excess Costs.*—Excess costs payable by the employee shall be computed from the total charges according to the ratio of excess weight to the total weight of the shipment.

SECTION 8. *Use of lift vans.*—Charges allowable hereunder for packing and crating and for transportation shall include expenses incurred in hiring, transporting, and packing lift vans when shipments are made in whole or in part by water, but shall not include charges in connection with any shipment of empty lift vans or for payment of storage charges or import duties on lift vans.

* * * * *

SECTION 10. *Valuation.*—The valuation of property as declared for shipping purposes shall not exceed that at which the lowest freight rates will apply. Should the employee desire a higher valuation, he must assume all costs of transportation in excess of the charges at the lowest rate.

SECTION 11. *Shipment from point other than last official station.*—The expenses of transportation allowable hereunder shall be payable whether the shipment is from the last official station of the employee to the new one, or from some previous place of residence of the employee to the new official station, or partially from both: *Provided,* That the expenses payable shall in no case exceed the costs of shipment by the most economical route from the last official station to the new: *And provided further,* That no expenses shall be allowable for the transportation of property acquired en route from the last official station to the new.

NOTE.—Section 11 was amended by Executive Order No. 9122 of April 6, 1942 (7 F. R. 2665), to read as follows:

"SECTION 11. *Shipment from points other than official station.*—The expenses of transportation authorized hereunder shall be allowable whether the shipment originates from the employee's last official station or from some previous place of residence, or partially from both: *Provided,* That the cost to the Government shall not exceed the cost of shipment in one lot by the most economical route from the last official station to the new. Shipments involving a cost greater than that authorized by this section may be made on a Government bill of lading, but the employee shall be required to reimburse the Government for the excess cost immediately upon completion of the shipment. No expenses shall be allowable for the transportation of property acquired en route from the last official station to the new. For the purposes of these regulations, the term 'official station' shall be construed to include any point from which the employee commutes daily to his official post of duty."

SECTION 12. *Time limit.*—All shipments allowable under these regulations shall begin within six months of the effective date of the transfer of the employee unless an extension is specifically granted by the head of the department or establishment: *Provided,* That in no case shall payment be allowable for shipments begun after two years from the effective date of the transfer.

NOTE.—Section 12 was amended by Executive Order No. 9122 of April 6, 1942 (7 F. R. 2665), to read as follows:

"SECTION 12. *Time limit.*—All shipments allowable under these regulations shall begin within six months of the effective date of the transfer of the employee unless an extension is specifically granted by the head of the department or establishment. Such an extension shall be approved by the head of the department or establishment within the six months' period during which shipment would otherwise begin and shall in no case be for a period exceeding two years from the effective date of the transfer, except that, for employees who enter upon active military, naval, or Coast Guard duty at any time prior to the expiration of the period within which transportation of their effects is authorized and who are furloughed for the duration of such duty, the extension may be made effective until a date not more than sixty days following the date of termination of the furlough."

SECTION 15. *Preparation of Vouchers.*—In preparing vouchers for payments under these regulations the following conditions shall be observed:

(*a*) *Statement of Weight.*—When charges for transportation are based upon weight, the actual (not estimated) weight shall be shown.

(*b*) *Itemization of Charges.*—Where services rendered cover, in addition to transportation, such other services as packing, crating, drayage, unpacking, and uncrating, the total charge for the services shall be itemized so as to show the charge for each service.

* * * * *

SECTION 16. *Exemption of Foreign Service Officers.*—The provisions of these regulations shall not apply to the transportation

of effects of officers and employees of the Foreign Service of the Department of State: *Provided,* That section 14 shall have full force and effect with respect to such transfers.

SECTION 17. *Effective Date.* This order shall be effective as of October 10, 1940, and shall be published in the Federal Register.

FRANKLIN D. ROOSEVELT.

U. S. GOVERNMENT PRINTING OFFICE: 1944